

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SAMMY LEROY McMURRAY,

Petitioner,

v.

No. 19-cv-0256 MV/SMV

**STATE OF NEW MEXICO,
PAUL SNEAD, and HARVEY FORT,**

Respondents.

ORDER REGARDING RECHARACTERIZATION OF LETTER

THIS MATTER is before the Court on Petitioner Sammy Leroy McMurray's handwritten "Notice of Appeal" [Doc. 1]. McMurray purports to appeal a ruling by several "state justices" who allegedly improperly convicted him of an unspecified sex crime. The proper vehicle for challenging a state conviction in federal court is a habeas corpus proceeding under 28 U.S.C. § 2254. *See Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000). Accordingly, the Court intends to recharacterize this matter as a § 2254 habeas proceeding. "[R]echaracterization means that any subsequent [§ 2254 petitions] will be subject to the restrictions on 'second or successive'" habeas claims. *Castro v. United States*, 540 U.S. 375, 376 (2003).

If McMurray wishes to pursue relief from his state conviction in this Court, he must: (1) file an amended petition on the proper form, which includes all grounds for relief under § 2254, and (2) either prepay the \$5 filing fee or, alternatively, file a motion to proceed *in forma pauperis* within 30 days of entry of this Order. If McMurray does not wish to pursue habeas relief, he may simply decline to comply with this Order. The failure to timely file an amended petition and address the \$5 filing fee will result in dismissal of this case without prejudice

IT IS THEREFORE ORDERED that no later than **May 1, 2020**, McMurray shall: (1) file an amended petition on the § 2254 proper form, which includes all grounds for relief; and (2) either prepay the \$5 filing fee or, alternatively, file a motion to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that the Clerk's Office shall **MAIL** McMurray a form § 2254 Petition and the Long Form *in forma pauperis* application.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge